HON'BLE SRI JUSTICE BILAL NAZKI
AND
HON'BLE SRI JUSTICE S. ANANDA REDDY

WRIT PETITION No.12841 of 2006

ORDER : (Per Hon'ble Sri Justice Bilal Nazki)

This writ petition has been filed by the petitioner, seeking a writ of mandamus directing the 1st respondent to adjust or refund an amount of Rs.18,97,113/- due to the petitioner as a refund for the assessment year 1996-97.

Counter has been filed and we have heard learned counsel for the parties.

Facts are not at dispute. The petitioner had paid the amounts by way of sales tax and the respondents held that the petitioner was entitled to a refund of Rs.20,47,113/-. A communication was addressed by the Commercial Tax Officer on 31.03.1998 to the petitioner, informing him that he had paid an amount of Rs.20,47,113/- in excess and this had been adjusted towards his liability. He had also been informed that in case of refund, he shall make an application in Form No.XXIII and if no such claim was made within a period of three years, no claim would be entertained thereafter. It has further been informed that a refund order of Rs.0/- is enclosed. So, the amount found paid in excess by the petitioner had already been adjusted by the impugned notice. But surprisingly, a demand was created again and it appears that the amounts due to the petitioner on

account of refund were not adjusted. Therefore, he is aggrieved of the action of the respondent.

The learned Government Pleader submits that the amounts could not be adjusted as no application was made within three years in Form No.XXIII.

Section 33-A of the Andhra Pradesh General Sales Tax Act, 1957 (for short 'the Act') reads as under—

"**Section 33-A: Form of claim for refund and limitation** :

(1) Every claim for refund under Section 33 shall be made by the assessee or licensee in such form and verified in such manner as may be prescribed, on or after the date on which the tax or the licence fees in respect of which the claim is made was directed to be refunded.

(2) No such claim shall be allowed unless it is made within three years from the date specified in sub-section (1)."

In this connection, he submits that such a provision in the Orissa Act had been upheld by a Constitutional Bench of the Supreme Court in **Burmah Construction Company v. State of Orissa**[1] and also in **The Orient Paper Mills Ltd. v. The State of Orissa**[2]. In the present case, we do not feel it will be necessary for us to go into the question whether the Department can refuse payment of refunds if applications are made beyond three years as contemplated by Section 33-A of the Act, because, that

question does not fall for consideration in the factual matrix of this case. A person would apply for a relief if it is not granted to him. A person would protest for an order if he is aggrieved of it and would try to seek remedies. A person is expected to make an application within three years for refund if refund is refused, but in the present case, as we have seen from the communication, an amount of Rs.20,47,113/- was ordered to be adjusted and the petitioner had no difficulty with it or was not aggrieved of such an order. Therefore, there was no need at any stage for the petitioner to approach the respondents with an application for refund. Therefore, in the present case, Section 33-A of the Act, in our view, has no application.

In these circumstances, we allow the writ petition and direct that the amounts be adjusted or refunded and along with these amounts, the interest shall also be calculated and either adjusted against the claims or refunded within a period of eight weeks from today. If an order of refund is made by the respondents within the time stipulated, the petitioner is at liberty to make an application accordingly for its actual refund.

BILAL NAZKI, J

16th July 2007

S. ANANDA REDDY, J

N.B:
Furnish C.C. in one week.
(b/o)

ajr

---

[1] 12 STC 816

[2] 12 STC 357